United Nations CCPR/C/SR.2168

International Covenant on Civil and Political Rights

Distr.: General
30 March 2004

Original: English

Human Rights Committee
Eighteenth session

Summary record of the 2168th meeting
Held at Headquarters, New York, on Tuesday, 16 March 2004, at 10 a.m.

Chairperson: Mr. Amor

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04-27216 (E)

The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Colombia (continued) (CCPR/C/COL/2005/5; CCPR/C/79/L/COL)

List of issues (continued) (CCPR/C/79/L/COL)

1. At the invitation of the Chairperson, the delegation of Colombia took places at the Committee table.

2. **The Chairperson** invited the delegation to answer the additional questions the Committee members had posed in relation to questions 1 to 15 on the list of issues, that is, those concerning the constitutional and legal framework within which the Covenant was implemented (article 2 of the Covenant); equality of rights between men and women, the principle of non-discrimination and protection of the family and children (articles 3, 23, 24 and 26 of the Covenant); states of emergency (article 4 of the Covenant); right to life, liberty and security of person and prohibition of torture (articles 6, 7 and 9 of the Covenant).

3. **Mr. Giraldo** (Colombia) said that if the delegation could not provide sufficient detail, written replies would be sent as soon as possible.

4. **Ms. Gil** (Colombia) said that Legislative Act No. 02 of 2003 amending the Constitution in order to combat terrorism, which had been subject to a full democratic debate prior to its passage, placed limitations on certain rights, such as habeas corpus and privacy of domicile and correspondence. The limitations it placed were those permitted under article 4 of the Covenant and were in no way arbitrary. Their application was limited in both time and scope: they were to be in effect for only four years and were intended to apply only in specific circumstances and places to be defined by statute. The four-year time limit also answered the concern that the provisions of Decree No. 2002 of 2002 that had been declared unconstitutional would be made permanent by the Act. Units of the armed forces would be given judicial police powers only on a temporary basis and in certain places and circumstances and solely at the request of the Office of the Public Prosecutor.

5. With regard to compliance with the Committee's views and recommendations under the Optional Protocol, the Colombian Government was committed to complying fully with the recommendations of international bodies. Act No. 288 of 1996 established the procedure for implementation. The role of the Committee of Ministers under the Act was to review the recommendations that had financial implications to determine what budgetary changes would be necessary. Nearly 30 recommendations of international bodies had been implemented pursuant to Act No. 288. The Committee of Ministers had given an unfavourable opinion in only two cases, and in such circumstances the Act provided that Colombia should go back to the international body that had issued the recommendation to explain the difficulties it faced in implementing it. The delegation could provide a written statement of the details of those cases.

6. With regard to conscientious objectors, military service was mandatory for all Colombian citizens, both men and women. Some exceptions were allowed on religious or ethnic grounds. Indigenous persons did not have to serve but could volunteer.

7. The Colombian Government was very concerned about domestic violence and would be happy to send statistics making it possible to gauge the extent of the problem. However, it considered domestic violence to be only one aspect of the broader issue of gender violence in Colombia, including the violence against women engendered by displacement and the very serious problem of trafficking in persons, which Colombia would need the help of the international community to combat. The delegation would prepare and send information on all aspects of gender violence in Colombia.

8. With regard to relations between the State and non-governmental organizations concerned with human rights, one of the tasks entrusted to the Presidential Advisory Council on Equal Rights for Women was to form strategic alliances with non-governmental women's organizations.

9. Questions had been raised about limitations on the powers of the Constitutional Court with respect to acts concerning states of exception. It should be borne in mind that such acts took two forms. There was the act declaring the state of exception based on an assessment that public order had been disrupted. The Government's position was that the Constitutional

Court should not be able to declare such acts unconstitutional, since such an assessment was the sole prerogative and responsibility of the executive branch. There were also acts providing for specific measures to be taken in the case of a state of exception, which might very well be attempts to restrict civil liberties, and such acts remained subject to review by the Constitutional Court.

10. In response to concerns that the recruitment of "peasant soldiers" would tend to create a paramilitary force, it should be noted that the peasant soldiers were part of the regular armed forces, were fulfilling their mandatory military service obligation and were subject to all the disciplinary rules applicable to the armed forces.

11. **Mr. Franco** (Colombia) referred to suggestions that the human rights situation had been deteriorating since 1997 and that political assassinations had increased. While the situation was far from satisfactory, the statistics showed that it had clearly improved. The number of massacres and abductions had dropped sharply from 2000 to 2003. It had been said that although the number of murders had declined, the number of political assassinations had increased, but he wished to point out that it was not always possible to know the motivation behind a murder. There were fewer killings of mayors, council members, union leaders, leftists and opposition members. During the elections in 1997, 82 candidates had been abducted and 52 assassinated, whereas in 2003, 16 candidates had been abducted and 29 assassinated. Obviously, there was still much cause for concern, but the figures showed an improvement. Members of the opposition party had won important electoral races and had been able to take office without hindrance. It was said that the democratic security and defence policy had exacerbated violence, but the drop in the figures for murders and abductions since the policy had been adopted showed otherwise.

12. It had also been suggested that Colombia was a nation in arms and that the public security forces were untrustworthy and were in fact not trusted by the general public. One should not lose sight of the central goal of defending democratic institutions and society itself from the depredations of the illegal armed groups. The negotiation option was being pursued, but until peace could be achieved, the Government had no choice but to confront the situation by strengthening the public security forces and engaging the whole society in combating the problem. Informers and collaborators were recruited on a purely voluntary basis. With regard to confidence in the public security forces, it should be noted that 86 per cent of the illegal combatants who had been demobilized had given themselves up to the government forces. In 2002, of over 9,000 complaints of human rights violations received by the independent Office of the People's Advocate in which the perpetrator was identified, only 260 concerned public security forces, and in 2003 there had been only 160 such complaints. Even that was far too many, but progress was evident. The present Administration was committed to pursuing any fair accusations of human rights violations involving members of the security forces. Recent opinion polls showed that the public security forces were viewed favourably by a high percentage of respondents.

13. With regard to states of exception, the Colombian Government respected its commitments under article 4 of the Covenant, paid close attention to the Committee's General Comment No. 29 and was guided by the principles of proportionality, legality, non-discrimination, non-derogability of certain rights and the temporary nature of derogations. Those principles were embodied in Act No. 137 of 1994. Constitutional provisions stipulated that states of exception could be declared only for successive periods of 90 days up to 180 days in a given year and were subject to the oversight of the judiciary and the legislature. A state of exception had been declared on 9 August 2002 in circumstances making it indispensable, including the attack on the Nariño Palace during the inauguration of the President and the fact that in 25 per cent of the municipalities of the country the democratically elected mayors had been unable to govern. For the duration of the declared state of exception, ending in February 2003, the Government had complied with the decisions of the Constitutional Court, the state of exception had been freely debated in the legislature and the measures taken had been aimed, not at civil liberties, but at threats to democracy. The so-called "war tax" had been levied only on those with incomes of over $1 million to raise additional revenues.

14. In reply to the question concerning how the Protocol Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) applied to the Colombian situation, the Government believed that the Protocol was not just politically but also ethically

binding on all persons, including the illegal armed groups. It had incorporated the content of the Protocol in all plans, programmes and training guidelines for the public security forces.

15. It was the Government's view that in the light of the transformation of the internal conflict, the negotiating efforts of the past four years and the existence of democratic institutions, there was no longer any justification for the armed conflict. It considered murder and abduction to be crimes and would ensure that they were prosecuted. The extensive use of land mines by insurgents had cost the lives of as many civilians as members of the security forces.

16. With regard to displaced persons, 181 entities made up the system serving the needs of displaced persons for food, health care, housing and education. The delegation had additional written information to provide in that regard. The only entity that had doubled its budget despite the economic crisis was the Social Solidarity Network. The Committee for Comprehensive Services to Displaced Persons would be meeting in a few days to respond to the Constitutional Court ruling of 22 January 2004.

17. With regard to allegations about ties between the paramilitary groups and the security forces, all the members of the security forces indicted had been separated from the service. The aim of the Government was to cut any such ties and root out all illegal armed forces. The paramilitary groups had burgeoned in part owing to the weakness of the State and the excesses of other illegal armed groups in some regions and in part owing to the grip that drug trafficking had on the country. Decree 128 of 2003 would be no bar to future prosecution of any persons implicated in war crimes or crimes against humanity.

18. With regard to paragraph 972 of the report, Afro-Colombians were able to participate in all planning mechanisms at the national and local levels. In addition, there existed a High-Level Advisory Committee for Black Communities and a Standing Committee for Consultation with Indigenous Peoples and Organizations. All the consultations required for environmental impact issues had been held. Moreover, a very large percentage of the national territory had been allocated to the Afro-Colombian community and indigenous groups.

19. **The Chairperson** invited the delegation of Colombia to address questions 16 to 28 on the list of issues.

Right to trial with due guarantees, independence of the judiciary (article 14 of the Covenant)

20. **Mr. Ramírez** (Colombia), replying to question 16, said that the Human Rights Unit had been strengthened, not weakened, by decentralization, as demonstrated by the increase in the number of prosecutors from 25 in 1994 to 41 currently. In addition, 11 support units had been created in the areas of the country where armed conflict was the heaviest. The restructuring of the Office of the Public Prosecutor had been designed to increase its ability to safeguard evidence and protect witnesses and victims of human rights violations promptly and efficiently.

21. Replying to the request for clarification about the allegations of arbitrary dismissal of prosecutors in the Human Rights and International Humanitarian Law Unit, he said that the Public Prosecutor appointed all the officials within the Office, and consequently had the authority to dismiss them. Such authority was never exercised arbitrarily or abusively. Of the 41 prosecutors mentioned earlier, only four had been dismissed. Staffing decisions — including the decisions to dismiss the individuals referred to in the question — were aimed solely at improving the efficiency of the Unit, as management statistics proved. Comparing the work of the Human Rights Unit from 1 January to 31 July 2001 with its work from 31 July to 31 December 2003, he said that the number of indictments had risen from 151 in 2001 to 229 in 2003; cases of preventive detention had risen from 691 to almost 1,200; successful prosecutions had risen from 516 to 791 and plea-bargains had risen from 25 to 97.

22. Turning to the question whether the State had concrete plans to submit a bill to Congress establishing a career structure in the Office of the Public Prosecutor, he said that Act No. 3/2002 had reformed the scope of work of that Office, removing some of its functions. The Act ensured full compliance with article 10 of the Covenant, providing for public trials based on evidentiary proof, with full respect for due process. The new system would come into effect on 1 January 2005 and take three years to implement. Once it had been shown that the system worked, legislative measures would be taken to establish a career system in the Office. The autonomy of prosecutors in the

adoption of their decisions was protected by law. The Public Prosecutor had no hierarchical authority over them in the matter of their decisions.

23. In replying to the question whether the Office of the Public Prosecutor had declared itself incompetent in favour of military criminal justice in specific cases of serious human rights violations, he stated that in Colombia conflicts of jurisdiction were settled by the Higher Council of the Judiciary. In the Santo Domingo and Mapiripán cases, the Office of the Public Prosecutor had declared itself competent. In the Pueblorrico case, the Public Prosecutor had established that the children's deaths had occurred in the context of a military operation, and therefore the case had been turned over to a military court.

24. In reply to the question regarding the adequacy of the funding for the Ombudsman's Office, he said that the Colombian criminal justice system was undergoing a total transformation, to bring it into conformity with the most important human rights instruments. The Ombudsman's Office and the national public-defender system that was being implemented were key elements in ensuring absolute equality between the body bringing the accusation and the accused. The Government considered the reforms important and would ensure that they were supported financially and through legislation. In fact, a bill was currently before the Congress that would oblige the Government to take the necessary budgetary steps to guarantee the funding of the Ombudsman's Office.

Freedom of expression and association; right to vote and to be elected *(articles 19, 22 and 25 of the Covenant)*

25. **Ms. Gil** (Colombia), replying to the allegation that intelligence files had been kept on human rights defenders and that the telephones of non-governmental organizations had been tapped, said that the Government of Colombia was determined to strengthen relations between the State and non-governmental organizations, and recognized their contribution to human rights and their support of the State.

26. The activities of human rights defenders were not the target of the intelligence services. If the names of some human rights defenders had appeared in intelligence reports, it had been for reasons unrelated to human rights activities. There had been one case of telephone-tapping, which had been properly investigated and punished. The State party would report to the Committee on the officials punished, the nature of the punishment and the status of the investigations.

27. **Mr. Franco** (Colombia), replying to the question concerning the violation by the State and by army officials of Presidential Directive 07, said that it was the Government's policy to protect members of non-governmental organizations. At the same time, it reserved the right to hold discussions with such organizations over errors of fact that might appear in their reports. The organizations needed to understand that the State must take a stand against the violence that threatened to undermine democratic institutions and harm civil society. Such matters were grounds for discussion. The Vice-President himself had held dialogues with non-governmental organizations; meetings with the military were currently being arranged and the Government was meeting with the organizations on the regional level.

28. With regard to the elections held in 2002, the Government had instituted guarantees of transparency. A programme had been implemented involving monitoring committees and international observers, education campaigns for voters and security for candidates. As a result, the number of candidates in 2003 had doubled.

Rights of minorities (article 27 of the Covenant)

29. **Mr. Franco** (Colombia), replying to the question concerning the representation of the indigenous and Afro-Colombian communities in the three branches of State power, said that there were special quotas of two indigenous persons in the Senate and two indigenous persons and two Afro-Colombians in the House of Representatives. Indigenous people and Afro-Colombians held municipal office, including at the level of mayor. The Government had set up a committee to deal with the special risks incurred by ethnic minorities. It was currently working on a protection plan for minority communities and had already convened indigenous security councils in different areas.

30. In reply to the question concerning consultations with indigenous communities, he said that action affecting the communities was never taken without prior consultation; to that end, a technical consultative

group and a political consultative group had been established.

31. **The Chairperson** thanked the delegation of Colombia for its replies and invited Committee members to ask any additional questions they might have concerning questions 16 to 28, the delegation's answers to the Committee's previous set of oral questions, Colombia's fifth periodic report or the general human rights situation in the country.

32. **Ms. Chanet**, addressing Columbia's legal system, noted that although the delegation had spoken of recent improvements in the human rights situation in Colombia, the 2003 report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia (E/2004/CN.4/13) did not appear to endorse that view. The report noted that the armed conflict was worsening, that the human rights situation had deteriorated due to drugs trafficking and the economic crisis and that there had been a significant increase in violations directly attributable to members of government forces. The report also implicated the Office of the Attorney-General in those violations. She wished to know the delegation's reaction to that apparent contradiction. Moreover, the Office of the Attorney-General seemed to be invested with extraordinary powers to restrict individual freedoms. The delegation had not provided an answer regarding the professional status of officials of the Office, and she would welcome information about provisions for their oversight, especially in the light of article 9, paragraph 4 of the Covenant. She would also welcome information about the mechanisms provided for defence in proceedings involving the Office of the Public Prosecutor, about whether lawyers were provided, and about their level of independence. The High Commissioner's report had recommended the establishment of a professional career structure for the Office, and she wished to know how prosecutors were appointed.

33. With regard to article 4 of the Covenant, Colombia's fifth periodic report appeared to present a contradiction regarding the state of emergency. The fifth periodic report stated that there had been no state of emergency during the current presidency, and yet according to the report of the High Commissioner (para. 80) the administration of justice had had to face major challenges as a result of the establishment of a state of emergency, notably with regard to the presumption of innocence and the guarantee of due process. In its concluding observations concerning Colombia's previous report, the Committee had asked about anonymous judges, and she wondered whether they still existed. With reference to article 14 of the Covenant, she noted that in its consideration of Colombia's previous report, the Committee had been insistent in its questions about the system of military justice in Colombia, but that the Government's response had been limited to paragraphs 191 and 192 of the fifth periodic report. She wished to know the exact composition of the military courts.

34. **Ms. Wedgwood** said that the delegation had not provided adequate replies concerning abortion in Colombia, and requested further information. She noted that there was reason for the Committee to be sceptical about lawyers' ability to remain independent within the military system of justice. Information about the implications of the 1997 ruling of the Constitutional Court, referred to in paragraph 191 of the fifth report, would be appreciated. With regard to the issue of wire-tapping, she said that if public statements about the overhearing of human rights defenders were too often combined with public criticism of their activities, the Government might erroneously be interpreted as wishing the defenders harm.

35. **Mr. Solari Yrigoyen** asked how the State party had disseminated information about its fourth periodic report and about the Committee's concluding observations.

36. **Mr. Bhagwati**, referring to paragraph 52 of the fifth periodic report, asked how the legal system had been strengthened by Act No. 270 of 1996, and what had been the nature of the Constitutional Court amendment. He wished to know how many constitutional cases had been heard since the submission of Colombia's previous report and whether any laws or regulations had been declared invalid because they were inconsistent with the Covenant or the Constitution. He also wished to know the Government's position regarding the powers of the Constitutional Court. The powers of the security forces had been viewed with concern by the Committee in its concluding observations concerning the fourth periodic report, and he would welcome more information about those powers. Referring to paragraph 146 of the report, he asked what measures had been taken to strengthen the capacity of the Colombian justice system to investigate violations of international humanitarian

law. He also wished to know the status of the inquiry into the links between State agents and illegal paramilitary groups, referred to in paragraph 151 of the report. He wished to know the composition of the Human Rights Unit of the Office of the Public Prosecutor, and in particular whether it included non-governmental organizations. He would also appreciate more information about the powers of the Ombudsman to deal with complaints of human rights violations.

37. **Mr. Wieruszewski** noted that the situation for local and international members of non-governmental organizations in Colombia remained dangerous, despite the Government's efforts to address the situation. He wished to know the Government's position in that regard, as it might sometimes appear that the situation as described to the outside was different from the real situation on the ground.

38. **Mr. Glèlè-Ahanhanzo**, speaking also in his capacity as the United Nations Special Rapporteur on Racism, welcomed the various measures taken by the Government to address the plight of the indigenous peoples of Colombia, but noted that their situation had not changed greatly as a result. Discrimination remained, and poverty was worsening; he would appreciate more information from the delegation in that regard. He also wished to know how the Government guaranteed the rights of human rights defenders. He would appreciate statistical data concerning the effective participation of minorities in public life, and about the Government's plans to settle the question of land ownership and the preservation of the country's biodiversity. In conclusion, he suggested that the armed conflict prevailing in the country could not be deemed the source of all the country's human rights problems, and he wished to know what was being done in concrete terms to address the overall human rights situation.

39. **Mr. Yalden** asked for clarifications and statistics concerning the possibility of women obtaining a legal abortion in Colombia. Other United Nations bodies and the Committee itself had earlier raised concerns about the criminalization of abortion in Colombia and the high mortality resulting from clandestine abortions.

40. **Sir Nigel Rodley** said that the Committee could not be pleased to hear that certain measures in Colombia with regard to which the Committee had raised concerns earlier were not only not being withdrawn but were even being further extended. He had in mind the constitutional amendment allowing the military to be given the status of judicial police and the decision that the Constitutional Court could not rule on the legality of declarations of emergency. What was constitutional in a given country depended, of course, on the legal context of that country but tampering with the system of checks and balances in any country could have very serious effects. He hoped that Colombia took seriously concerns raised by the Committee and other international human rights bodies. He also asked for clarification as to whether the proposed amnesty for paramilitary people who laid down their arms would also mean that a person who had benefited from the amnesty and who had not been charged with war crimes at the time could nevertheless be prosecuted for such crimes if it were discovered afterwards that he had committed such crimes.

The meeting was suspended at 12.20 p.m. and resumed at 12.35 p.m.

41. **Mr. Ramírez** (Colombia) said that in considering the functioning of the judiciary in Colombia it must be borne in mind that there were controls and guarantees in place. Article 29 of the Constitution guaranteed due process in criminal proceedings and those accused of crimes were guaranteed the assistance of an attorney. Decisions taken at a particular level were subject to review at the next level. Judges also subjected proceedings to reviews for legality concerning observance of procedural and evidentiary rules. Under article 93 of the Constitution the provisions of international human rights instruments to which Colombia was party were considered to have the force of domestic law. The Constitutional Court had on several occasions overturned decisions on that basis. The Committee would be given more detail on the work done by the Higher Council of the Judiciary in exercising disciplinary control over prosecutors. On the subject of military justice, the 1991 Constitution did not permit military tribunals to judge civilians. The new military penal code provided criteria for decisions that were compatible with Colombia's international treaty obligations. Questions of jurisdiction involved, for instance, determining whether the acts in question by a military person had been committed in the exercise of his official functions. Under the 1991 Constitution branches of Government were independent. The Higher Council of the Judiciary had been established to administer all resources of the judiciary and to monitor the performance of judges.

The Constitutional Court had revised the Act establishing the Higher Council and specifying its functions several times. The independence of the Attorney-General's Office and all its prosecutors was ensured by a system of checks and balances that protected the independence of individual prosecutors from outside pressure. His delegation would provide the Committee with a fuller account and statistics concerning that Office and its work.

42. **Ms. Gil** (Colombia) said that there was no contradiction between the information on states of exception presented in the current report and that in the previous one; there had been no such states during the previous period. On the subject of the military justice system, the new military justice code had been introduced in 2000, establishing the independence of that system from the military command structure. The military tribunals did not deal with cases involving crimes against humanity, but focused on service-related acts, and there was a body of case law in the Constitutional Court and criteria had been established to enable judges to determine whether specific acts were service-related.

43. According to reports telephone tapping activities had involved only one non-governmental organization; they were certainly not systematic and were subject to criminal prosecution if the proper legal procedures were not followed. With regard to the effect of new legislation on the powers of the Constitutional Court, especially during states of exception, she said that no limitations had been imposed and that the Committee's concerns in that regard would be transmitted to those preparing the legislation. Concerning the powers of the Office of the Ombudsman, she said that that Office was the primary body charged under the Constitution with monitoring and protecting human rights. With regard to the issue of abortion, her Government would submit a detailed written report to the Committee on the legal, cultural and social aspects of the problem.

44. **The Chairperson** thanked the Colombian delegation for its report and replies to the Committee's questions. The Committee remained, however, somewhat perplexed. Colombia had clearly shown good will and desire to achieve progress but action to that end had been rather limited. Although some progress had been made, many serious problems remained. Social attitudes were also an obstacle. In that connection he cited the criminalization of abortion, even in case of rape, in which a woman ended up being doubly victimized. The continued harassment and persecution of human rights organizations and workers was of great concern. Despite some degree of improvement, much remained to be done in Colombia to ensure that country's commitment to implementing the requirements of the Covenant.

The meeting rose at 1.05 p.m.